

DEPOSITION OF WALLACE HUNTER

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY of PHENIX CITY, ALABAMA,

et al.,

Defendants.



* * * * *

DEPOSITION OF WALLACE BURNS HUNTER, SR., taken
pursuant to stipulation and agreement before Shannon
M. Williams, Certified Court Reporter and
Commissioner for the State of Alabama at Large, in
the offices of City Hall, 601 12th Street, Phenix
City, Alabama, on Wednesday, April 4, 2007,
commencing at approximately 10:45 a.m. EST.

* * * * *

APPEARANCES

FOR THE PLAINTIFF:

THOMAS A. WOODLEY
Woodley & McGillivary
1125 15th Street N.W.
Suite 400
Washington, D.C. 20005

FOR THE DEFENDANTS:

JAMES P. GRAHAM, JR.
712 13th Street
P.O. Box 3380
Phenix City, Alabama 36868-3380

ALSO PRESENT:

David Davis
H.H. Roberts

1 STIPULATIONS

2 It is hereby stipulated and agreed by and
3 between counsel representing the parties that the
4 deposition of WALLACE BURNS HUNTER, SR., is taken
5 pursuant to the Federal Rules of Civil Procedure and
6 that said deposition may be taken before Shannon M.
7 Williams, Certified Court Reporter and Commissioner
8 for the State of Alabama at Large, without the
9 formality of a commission; that objections to
10 questions other than objections as to the form of
11 the questions need not be made at this time but may
12 be reserved for a ruling at such time as the
13 deposition may be offered in evidence or used for
14 any other purpose as provided for by the Federal
15 Rules of Civil Procedure.

16 It is further stipulated and agreed by and
17 between counsel representing the parties in this
18 case that said deposition may be introduced at the
19 trial of this case or used in any manner by either
20 party hereto provided for by the Federal Rules of
21 Civil Procedure.

22 * * * * *

1 WALLACE BURNS HUNTER, SR.

2 The witness, having first been duly sworn
3 or affirmed to speak the truth, the whole truth and
4 nothing but the truth, testified as follows:

5 THE REPORTER: Usual stipulations?

6 MR. GRAHAM: We do want to read and sign.
7 He's our designated 30(b)(6).

8 MR. WOODLEY: I'm going to go into that in
9 just a couple minutes for the Record.

10 EXAMINATION

11 BY MR. WOODLEY:

12 Q. Mr. Hunter, could you please state your
13 full name for the Record, please, sir?

14 A. Wallace Burns Hunter, Sr..

15 Q. You're currently the fire chief of Phenix
16 City Fire Department?

17 A. Yes, sir.

18 Q. Chief Hunter, my name is Tom Woodley, and
19 I'm one of the attorneys representing the plaintiff,
20 David Davis, in this pending federal court action.
21 And I assume that you're aware that you are named as
22 an individual defendant in your individual capacity
23 as well as your official capacity in this lawsuit;
24 is that correct?

25 A. Yes, sir.

1 Q. Are you at least in general familiar with
2 the allegations and the issues that have been raised
3 in this lawsuit?

4 A. Yes, sir.

5 Q. Have you had an opportunity to spend some
6 time with the city attorneys about the issues in the
7 lawsuit and the procedures that we'll be following
8 today in your deposition?

9 A. Yes, sir.

10 Q. Have you ever had your deposition taken
11 before in another case?

12 A. Yes, sir.

13 Q. Is that more than one other case?

14 A. I guess it was basically -- yes, it was
15 one, I guess, or -- two cases were basically
16 combined, yes.

17 Q. So in light of that experience and the
18 chance that you have had to spend with the city
19 attorneys, is it fair to say that you are familiar
20 with the procedures that we're going to be following
21 today in your deposition?

22 A. Yes, sir.

23 Q. Again, you sat in on the earlier deposition
24 of the mayor and so you saw how that went. I'll be
25 asking questions. We expect you to give full,

1 complete, and honest answers. Do you understand
2 that?

3 A. Yes, sir.

4 Q. And then we have one of the most able
5 reporters here in the State of Alabama, and she'll
6 be taking down everything that's said today by me
7 and by you. Do you understand that?

8 A. Yes, sir.

9 Q. And then she will have a chance to put that
10 together in a written transcript form which you'll
11 have an opportunity to read and sign. Do you
12 understand that?

13 A. Yes, sir.

14 Q. And you must give verbal responses because
15 the reporter can't take down nods of the head.

16 A. Yes, sir.

17 Q. If at any time you don't hear or understand
18 one of my questions, please stop me immediately, and
19 I'll be more than happy to repeat or rephrase that
20 question. Do you understand that?

21 A. Yes, sir.

22 Q. Chief Hunter, are you under any medication
23 or do you have any kind of health condition that
24 might prevent you or impair you from understanding
25 any of my questions?

1 A. No, sir.

2 Q. And, of course, lastly, you're obviously
3 under oath and therefore sworn to tell the truth
4 under the potential penalty of perjury. Do you
5 understand that, Chief Hunter?

6 A. Yes, sir.

7 Q. Okay. Let's refer to the notice of
8 depositions because the city has designated you as
9 the Rule 30(b)(6) deponent. And you can turn to the
10 binder of exhibits that we have in front of you,
11 which the first exhibit is Exhibit Number 1. And on
12 page two of that Notice of the Deposition, it
13 indicates certain paragraphs that you have been once
14 again selected by the city and the other defendants
15 as the Rule 30(b)(6) representative to give
16 knowledgeable and authoritative testimony on the
17 issues that are involved in this case.

18 And I want to summarize those areas just so you
19 are again aware of the subjects that you have been
20 authorized to be the Rule 30(b)(6) witness. And
21 that would be the employment of plaintiff David
22 Davis and the circumstances surrounding his
23 termination by the Phenix City Fire Department. Do
24 you understand that, sir?

25 A. Yes, sir.

1 Q. And then in subparagraph (b) of the notice,
2 it also indicates that you're the representative
3 witness giving testimony on any communications that
4 Mr. Davis has had with the mayor, the city council,
5 persons in the city manager's office, persons in the
6 city's Human Resource Department and directors or
7 persons in the city Fire Department. Do you
8 understand that as well?

9 A. Yes, sir.

10 Q. And the third area would be communications
11 that Mr. Davis has had regarding staffing in the
12 fire department, health and safety of fire and
13 rescue service personnel, the adequacy and
14 efficiency of fire department operations to protect
15 the citizens in this city, and response times and
16 other personnel and employee morale in the fire
17 department. Do you understand that as well, Chief
18 Hunter?

19 A. Yes.

20 Q. The additional area that you have been
21 designated is communications about fire department
22 matters involving the employees and other issues.
23 You're aware of that as well?

24 A. Yes, sir.

25 Q. And then you've also been designated as the

1 witness concerning communications that relate in any
2 way to the phone conversation that Mr. Davis had
3 with one of the other defendants, Mayor Jeffrey
4 Hardin, on or about April 17, 2006, regarding the
5 proposed extension of the probationary period. Do
6 you understand that as well, Chief Hunter?

7 A. That's correct, yes, sir.

8 Q. And then lastly would be the subject of the
9 facts and documents which relate in any way to the
10 chain of command within the fire department. You're
11 aware of that as well, Chief Hunter?

12 A. Yes, sir.

13 Q. Let me invite your attention to another
14 exhibit within the binder in front of you. And I
15 should say again for the Record that the city
16 attorney also has a full set of these exhibits for
17 his review during the deposition.

18 Exhibit 6, Chief Hunter, appears to be a job
19 description of the job title of fire chief that has
20 been furnished to me by the city in this case. Are
21 you familiar with this job description?

22 A. Yes, sir.

23 Q. As far as you know, Chief Hunter, is this
24 an accurate job description of what you do as the
25 fire chief?

1 A. Yes.

2 MR. GRAHAM: Make sure you read it now.

3 Q. Again, Chief Hunter, when I ask you about
4 these papers and exhibits, make sure that you have
5 an adequate time to review them before you respond
6 to my questions.

7 Chief Hunter, have you had an adequate time to
8 review your job description?

9 A. Hold on one second.

10 Q. Okay. I'm sorry.

11 A. Yes, sir.

12 Q. Okay. So the general question I have, is
13 this a fairly accurate and complete description of
14 your job as the fire chief?

15 A. Somewhat. It's always if the city manager
16 give you any other details to do, any extra, it may
17 not be written in here but you have --

18 Q. And in line of authority, this job
19 description says you, as the fire chief, report to
20 the city manager; is that correct?

21 A. That is correct.

22 Q. And how long have you been the fire chief?

23 A. Since -- officially, since May of 2005.

24 Q. Okay. Why don't you just go back and trace
25 for us your career in the city's fire department,

1 how you moved up to the top position?

2 A. Okay. I started here in June of 1986. I
3 worked as a firefighter until April of -- I think it
4 was April of '89, I believe. And I worked as a
5 driver/engineer from April of '89 until 1995, I
6 became a captain through promotions. And I worked
7 as a captain until 1998. I became an assistant
8 chief. And then from '98 to 2001 -- in 2001, I
9 became interim fire chief, and for a brief time in
10 2001, I was the fire chief.

11 And I went from there, from being fire chief, I
12 stepped out of that position and I went to being a
13 deputy chief. And I stayed at the deputy chief
14 until my current appointment as fire chief.

15 Q. Okay. And you may have said this, but I
16 may have missed it. When were you first appointed
17 as the fire chief?

18 A. This time?

19 Q. Yes.

20 A. In May of 2005.

21 Q. Okay. And within your duties and
22 responsibilities as a fire chief here in the city,
23 are you responsible for the recruitment, selection,
24 and hiring and promotion of personnel within the
25 fire department?

1 A. That's correct.

2 Q. Do you have the final decisionmaking
3 authority as to hiring in the fire department?

4 A. That's correct.

5 Q. Do you have the final decisionmaking
6 authority as to terminations of employees in the
7 fire department?

8 A. As far as recommendations as far as
9 termination.

10 Q. So you make a recommendation if an
11 individual should be terminated from the fire
12 department?

13 A. Yes, sir.

14 Q. And who do you make that recommendation to?

15 A. I make that recommendation to the city
16 manager.

17 Q. And is it your understanding that the city
18 manager has the final decisionmaking authority to
19 terminate an employee from the fire department?

20 A. Basically the way I have done things since
21 I have been in as chief is make the recommendation
22 and always run things through the city attorney.

23 Q. I'm sorry?

24 A. We make a recommendation -- I make a
25 recommendation to the city manager, and we always

1 try to make sure we run things through the city
2 attorney.

3 Q. Okay. But in terms of the individual who
4 has the final decisionmaking authority within the
5 city's structure concerning a possible termination
6 of a City employee, is it your understanding that it
7 is the city manager who makes that final decision?

8 A. Well, I just can't put that on the city
9 manager. I make a recommendation. It's my
10 department. And when it's reached that point, if it
11 reach that point for terminate action, we go through
12 the city manager to make sure it's okay.

13 Q. But who has the final sign off on somebody
14 being fired in the fire department?

15 A. I guess it would be the city manager.

16 Q. Okay.

17 A. I guess.

18 Q. Do you, as fire chief, have authority to
19 issue other forms of discipline without the input
20 and approval of the city manager such as suspensions
21 or written reprimands?

22 A. Yes, sir.

23 Q. And where does your authority stop? Is it
24 at the level of someone being terminated where you
25 say the city manager has to make that choice?

1 A. Well, that's a last resort that you want to
2 go to is termination. So when you get to that
3 point, you must always make sure you go through the
4 city manager with that, let him know that.

5 Q. But if you as fire chief wanted to suspend
6 someone, you don't have to go through the city
7 manager to suspend a firefighter, do you?

8 A. No. But I inform the city manager.

9 Q. And as a long-time veteran employee of the
10 city's fire department, are you aware that the
11 plaintiff, David Davis, had worked for a number of
12 years for the city Fire Department?

13 A. Yes, sir.

14 Q. Do you know how many years he was employed
15 in the city Fire Department?

16 A. I think it was about 8 years --

17 Q. Okay.

18 A. -- if I'm correct.

19 Q. If I mention that Mr. Davis was hired in
20 the city Fire Department in April of 1998, would
21 that sound about right to you?

22 A. Yes, sir, somewhere in there.

23 Q. Are you aware that Mr. Davis was promoted
24 to the rank of sergeant in the city Fire Department?

25 A. That's correct.

1 Q. Did you have any input into that promotion
2 of Mr. Davis?

3 A. That's correct.

4 Q. Did you recommend that he be promoted to
5 sergeant?

6 A. That's correct.

7 Q. And why did you do that?

8 A. Because he had met the requirements.

9 Q. Did you think he was doing a good job and
10 deserved to be promoted to sergeant?

11 A. That's correct.

12 Q. Do you remember approximately when that
13 was, at least the year that he was promoted to
14 sergeant?

15 A. I guess somewhere around -- if I'm correct,
16 2002 or 2003, somewhere in there.

17 Q. Okay. Let me invite your attention to
18 another exhibit, Chief Hunter, which would be
19 Exhibit 18, and this appears to be a memo from
20 Deputy Chief Roy Waters addressed to yourself as the
21 fire chief dated February 6, 2006. And the re line
22 is, quote, letter to Mr. H.H. Roberts, end quote.

23 A. Hold on. Let me see.

24 Q. Exhibit 18.

25 A. Okay. Yes. I got it.

1 Q. And it's addressed to you, so I assume you
2 received this on or about February 6, 2006; is that
3 correct?

4 A. Yes.

5 Q. Okay. And you'll see at the very tail-end
6 at the bottom of this first page of this memo from
7 Deputy Chief Waters to yourself, he indicates,
8 quote, as I have communicated to you on several
9 occasions, David Davis is doing an outstanding job
10 for me and has a very positive and professional
11 attitude, end quote. Do you see where it says that?

12 A. Yes, sir.

13 Q. As far as you know, was Deputy Chief Roy
14 Waters speaking honestly and truthfully when he made
15 that statement to you in the memo?

16 A. I believe so.

17 Q. Okay. And did you, sir, agree with that
18 statement coming from your Deputy Chief, Mr. Waters,
19 about the job performance of Mr. Davis up to at
20 least February 6, 2006?

21 A. I was happy about it.

22 Q. You were happy about it?

23 A. Yes, sir.

24 Q. But did you agree with it as far as you
25 knew as the fire chief, that Mr. Davis was doing a

1 good job and had a very positive and professional
2 attitude?

3 A. I took Chief Waters' word for that, yes.

4 Q. Did you have any reason to disagree?

5 A. No, sir.

6 Q. Okay. Does the city and its fire
7 department have a policy of giving annual
8 evaluations of the firefighters employed in the
9 department?

10 A. That's correct.

11 MR. WOODLEY: Okay. Let's go off the
12 record for a second.

13 (Discussion held off the record.)

14 MR. WOODLEY: We can go back on the record.

15 Q. Chief Hunter, let me move to a different
16 subject matter. At some point in time, were you
17 aware that the Phenix City Fire Department employees
18 formed a labor organization in which they became
19 members of the labor association?

20 A. Yes, sir. I was a part of it.

21 Q. You were a part of it yourself?

22 A. Yes, sir.

23 Q. You were a member?

24 A. Yes, sir.

25 Q. Do you remember when you first became a

1 member of the firefighters' local union?

2 A. It was back when they began it, when it
3 began. I couldn't tell you the exact date.

4 Q. Is this years ago or --

5 A. Yes, sir. Current -- current association
6 that's in place.

7 Q. And would that be Local 3668 affiliated
8 with the International Association of Firefighters?

9 A. That is correct.

10 Q. Are you still a member of that union?

11 A. I'm in International now. International
12 Fire Chiefs Association.

13 Q. Okay. So at some point in time, you
14 dropped out of the local union that consisted of the
15 firefighters?

16 A. Yes, sir.

17 Q. Do you remember roughly when you left that
18 local firefighters' organization?

19 A. When I became an officer. It was somewhere
20 in -- I can't remember the exact date, but --

21 Q. Okay. Did it come to your attention at
22 some point in time that Mr. David Davis became a
23 vice-president of the firefighters' local labor
24 organization?

25 A. Yes, sir.

1 Q. Did it also come to your attention at some
2 point that Mr. Davis became the president of the
3 firefighters' local labor organization?

4 A. Yes, sir.

5 Q. And do you remember roughly when that was
6 that you were informed that he was the new president
7 of the local union?

8 A. I can't tell you an exact date, but I
9 remember, you know, knowing about it, you know, not
10 too much.

11 Q. Do you remember how it came to your
12 attention? Did someone tell you he was the new
13 president of the local union?

14 A. I believe so. I probably overheard some
15 talk in the stations.

16 Q. Does the city recognize the firefighters'
17 local union as a representative of the firefighters?

18 A. No, sir.

19 Q. And why not?

20 A. Mr. Roberts explained that in the letter.

21 Q. Have you ever had meetings or conversations
22 with David Davis, in his capacity as the president
23 of the local labor organization, about any issues or
24 concerns that the firefighters had?

25 A. Have I had a meeting with him?

1 Q. Yes.

2 A. No, sir.

3 Q. Have you had any conversations with
4 Mr. Davis in his role as the president of the local
5 union about issues that were of concern to the
6 members of the fire department?

7 A. No, sir. I never was given a chance to.

8 Q. Okay. Well, could you elaborate on that?

9 A. Just -- I just never was given a chance.
10 If it was some concerns from that direction, I never
11 was given -- was asked to have a meeting.

12 Q. Was what?

13 A. No one ever asked to have a meeting with
14 me.

15 Q. So Mr. Davis never asked to sit down with
16 you and talk about morale or staffing levels or any
17 issues like that?

18 A. No, sir.

19 Q. Have you ever had collective meetings with
20 the firefighters about issues of concern they might
21 have in the fire department?

22 A. The way the chain of command work, mostly
23 any issues or concerns that firefighters have, they
24 are to give those to the captains and they'll pass
25 it on to the assistant chiefs, and the assistant